

Message

**From:** Hamlett, Karen [hamlett.karen@epa.gov]  
**Sent:** 9/12/2019 11:00:50 PM  
**To:** Sharke, Janet [Sharke.Janet@epa.gov]; Dean, StevenB [Dean.StevenB@epa.gov]; Milam, Claire [Milam.Claire@epa.gov]  
**CC:** Kelly, Lynn [Kelly.Lynn@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** RE: FOIA Request EPA-HQ-2019-001054 - seeking annual online employee FOIA training  
**Attachments:** EPA FOIA Mandatory Training FY2019 Text Alternative v2.docx; FY17 FOIA Training\_Alternative Text\_August 2017.docx; FY18 FOIA Training\_Alternative Text\_September 2017.docx

Janet,

FOIA	Document
FY19	attached
FY18	attached
FY17	attached
FY16	Coming soon

Claire,

Can you please send the FY16 FOIA Alternative text document?

Have a wonderful day!

*Karen Hamlett*  
*EPA University - Leadership Development Institute*  
*1201 Constitution Avenue*  
*WJC East, #1136 H*  
*Washington, DC 20460*  
*202-564-8302*

---

**From:** Sharke, Janet  
**Sent:** Thursday, September 12, 2019 4:13 PM  
**To:** Hamlett, Karen <hamlett.karen@epa.gov>; Dean, StevenB <Dean.StevenB@epa.gov>  
**Cc:** Kelly, Lynn <Kelly.Lynn@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** FOIA Request EPA-HQ-2019-001054 - seeking annual online employee FOIA training

Hi Karen and Steven,  
I am writing you per Wendy Schumacher's suggestion.

I am seeking the annual FOIA training that employees take online via skillport for FY18, FY17, and FY16 in order to review to see if responsive to a FOIA request now in litigation.

If you can provide the text that would be fabulous!  
Thank you in advance.

*Janet Sharke*

---

**From:** Schumacher, Wendy <schumacher.wendy@epa.gov>  
**Sent:** Thursday, September 12, 2019 2:49 PM  
**To:** Sharke, Janet <Sharke.Janet@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Person, Linda

<Person.Linda@epa.gov>

**Cc:** Kelly, Lynn <Kelly.Lynn@epa.gov>

**Subject:** RE: COA v. DOI litigation (foreseeable harm std) EPA-HQ-2019-001054

Janet,

Have you checked with the Training Office? My contacts are Karen Hamlett and StevenBDean (supervisor). The FY19 training is attached.

Looked for the text alt for FY17, but didn't locate it. I would not have a copy of FY16.

Please let me know if drafts of FY17 and FY18 are acceptable and I can provide those.

Thanks, Wendy

---

**From:** Sharke, Janet <Sharke.Janet@epa.gov>

**Sent:** Thursday, September 12, 2019 2:30 PM

**To:** Gottesman, Larry <Gottesman.Larry@epa.gov>; Schumacher, Wendy <schumacher.wendy@epa.gov>; Person, Linda <Person.Linda@epa.gov>

**Cc:** Kelly, Lynn <Kelly.Lynn@epa.gov>

**Subject:** COA v. DOI litigation (foreseeable harm std) EPA-HQ-2019-001054

Hi all,

We are seeking the texts of the annual FOIA training (2016-2019) taken by all EPA employees to determine if responsive to the FOIA request above.

We have committed to DOJ an initial production due 9/27.

Thanks!

*Janet Sharke*

Message

---

**From:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Sent:** 2/27/2019 7:31:11 PM  
**To:** OGC NFO [OGC-NFO@epa.gov]  
**CC:** Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Subject:** FW: For Joe & Elise -- Read-ahead material for NFO Reg Review tomorrow  
**Attachments:** Phase I FOIA Regs, Clean, 02.27.2019.docx; Phase I FOIA Regs, Redline, 02.27.2019.docx; Phase I FOIA Regs, Changes Explanation, 02.27.2019.docx

NFO colleagues –

FYI, the attached revised regulations we will present to Joe and Elise at reg review tomorrow.

Thank you to all who have contributed to this effort over the past months, and a huge thanks to Chris and Dan Schramm for working intensely on this package.

Tim

Timothy R. Epp  
Acting Director, National FOIA Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel. 202-564-2830

---

**From:** Epp, Timothy  
**Sent:** Wednesday, February 27, 2019 2:26 PM  
**To:** OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>  
**Cc:** Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** For Joe & Elise -- Read-ahead material for NFO Reg Review tomorrow

Folks,

Attached for Joe and Elis read-ahead prior to NFO Reg Review on Thursday at 4 pm:

- 1) Draft FOIA Regulations Preamble & Reg Text w/out redlines
- 2) Draft FOIA Regulations text showing redline changes
- 3) Memo providing explanation of regulation changes

Thanks,  
Tim

Timothy R. Epp  
Acting Director, National FOIA Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel. 202-564-2830

Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 2/14/2019 6:48:55 PM  
**To:** Blake, Wendy [Blake.Wendy@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]  
**CC:** Epp, Timothy [Epp.Timothy@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Neal, Kerry [neal.kerry@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** RE: Review Request, FOIA Regs Phase I  
**Attachments:** DRAFT Phase I FOIA Regs, Redlining (02.14.2019).docx; DRAFT Phase I FOIA Regs, Clean (02.14.2019).docx; Phase I FOIA Regs, Changes Explanation (02.13.2019).docx

Hello again Team,

I wanted to address Kevin's question and provide you with more tools for your review. These should hone your review in on the operative changes.

Attached are:

1. An updated, clean version of the draft regs
2. A red-lined version of the draft regs' statutory language, comparing the draft regs to the in force regs
3. An explanation of the changes with citations to the clean regs' preamble and statutory text, and the redlined version.

Thank you again, and I apologize for the confusion.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Tuesday, February 5, 2019 9:11 AM  
**To:** Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Denise Walker (Walker.Denise@epa.gov) <Walker.Denise@epa.gov>; Kerry Neal (neal.kerry@epa.gov) <neal.kerry@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** Review Request, FOIA Regs Phase I

Hello GLO,

Here is a draft of the Phase I FOIA Regulations Revisions for your review: [DRAFT Phase I FOIA Regs \(02.04.2019\).docx](#).



Phase I will result in a final review without notice and comment. As such, I have also provided a list of topics that were determined to either meet the Good Cause or Procedural Exceptions.

We hope to bring these regulations to Elise and Joe a week from today. If possible, would you please provide comments and feedback by the end of this week?

Please let me know if you would like additional information for background (or just give me a call). As a reminder, any changes that we do not make in Phase I may be considered for inclusion in Phase II, which will go through notice and comment.

Thank you in advance for your thoughtfulness and hard work.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E  
[Creech.Christopher@EPA.gov](mailto:Creech.Christopher@EPA.gov)



Message

---

**From:** Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Sent:** 2/20/2019 6:59:02 PM  
**To:** Creech, Christopher [Creech.Christopher@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]  
**CC:** Epp, Timothy [Epp.Timothy@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Neal, Kerry [neal.kerry@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** RE: Review Request, FOIA Regs Phase I  
**Attachments:** DRAFT Phase I FOIA Regs Redlining (02.14.2019).dps.docx; draft phase I preamble\_kmm\_dps

All attached are my comments on the redlined reg text and the preamble file. The latter are on top of Kevin's comments. Generally I think these are looking good for a Phase I, no public comment approach, but I flagged a few issues:

# Ex. 5 AC/AWP/DP

Happy to discuss more on Friday. Best, Dan

---

**From:** Creech, Christopher  
**Sent:** Friday, February 15, 2019 9:31 AM  
**To:** Miller, Kevin <Miller.Kevin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Neal, Kerry <neal.kerry@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review Request, FOIA Regs Phase I

Edits on a previously version would be perfectly okay. Thanks, Kevin.

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Miller, Kevin

**Sent:** Thursday, February 14, 2019 10:28 PM

**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>

**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Neal, Kerry <neal.kerry@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>

**Subject:** RE: Review Request, FOIA Regs Phase I

Hi Chris,

Wendy already has our edits on the version you previously sent. I will check in with her.

Kevin

---

**From:** Creech, Christopher

**Sent:** Thursday, February 14, 2019 1:49 PM

**To:** Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>

**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Neal, Kerry <neal.kerry@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>

**Subject:** RE: Review Request, FOIA Regs Phase I

Hello again Team,

I wanted to address Kevin's question and provide you with more tools for your review. These should hone your review in on the operative changes.

Attached are:

1. An updated, clean version of the draft regs
2. A red-lined version of the draft regs' statutory language, comparing the draft regs to the in force regs
3. An explanation of the changes with citations to the clean regs' preamble and statutory text, and the redlined version.

Thank you again, and I apologize for the confusion.

Best,

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

---

**From:** Creech, Christopher

**Sent:** Tuesday, February 5, 2019 9:11 AM

**To:** Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Miller, Kevin

<Miller.Kevin@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>

**Cc:** Epp, Timothy <Epp.Timothy@epa.gov>; Denise Walker (Walker.Denise@epa.gov) <Walker.Denise@epa.gov>; Kerry Neal (neal.kerry@epa.gov) <neal.kerry@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>

**Subject:** Review Request, FOIA Regs Phase I

Hello GLO,

Here is a draft of the Phase I FOIA Regulations Revisions for your review: [DRAFT Phase I FOIA Regs \(02.04.2019\).docx](#).

Phase I will result in a final review without notice and comment. As such, I have also provided a list of topics that were determined to either meet the Good Cause or Procedural Exceptions.

We hope to bring these regulations to Elise and Joe a week from today. If possible, would you please provide comments and feedback by the end of this week?

Please let me know if you would like additional information for background (or just give me a call). As a reminder, any changes that we do not make in Phase I may be considered for inclusion in Phase II, which will go through notice and comment.

Thank you in advance for your thoughtfulness and hard work.

Best,

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

[Creech.Christopher@EPA.gov](mailto:Creech.Christopher@EPA.gov)



Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 2/22/2019 11:59:50 PM  
**To:** Blake, Wendy [Blake.Wendy@epa.gov]  
**CC:** Miller, Kevin [Miller.Kevin@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Neal, Kerry [neal.kerry@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Subject:** Review Requested, Draft Phase I FOIA Regs  
**Attachments:** DRAFT Phase I FOIA Regs, Clean (02.22.2019).docx; Phase I FOIA Regs, Changes Explanation (02.22.2019).docx; DRAFT Phase I FOIA Regs Redlining (02.22.2019).dps.docx

Hello Wendy,

Please find the latest draft of the Phase I FOIA regulations attached—"Draft Phase I FOIA Regs, Clean (02.22.2019)". Also attached is a Redlined version of the Regs and a summary of the changes made with citations to both the clean and redlined versions.

Thank you and please let me know if you have any questions.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E  
[Creech.Christopher@EPA.gov](mailto:Creech.Christopher@EPA.gov)



## Appointment

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 2/1/2019 6:55:52 PM  
**To:** Neal, Kerry [neal.kerry@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** FOIA Regs Preamble Review  
**Attachments:** PREAMBLE\_Phase I Preamble Redlining.docx  
**Location:** NFO Conference Room  
**Start:** 2/1/2019 7:00:00 PM  
**End:** 2/1/2019 8:00:00 PM  
**Show Time As:** Tentative

Attached is a redlined version. I will make a clean version for everyone tomorrow morning, as well.

Hello All,

I wanted to take some time tomorrow to review my redlining of the FOIA Regs Preamble. I hope to have a draft ready for you by COB. The preamble is an adjustment to Dan's original draft and shouldn't require substantial changes. As a reminder, our current timeline has a draft of the regs going to GLO and NFO for review next week.

Thank you and please let me know if another date or time works better for you.

Best,  
Chris

Message

---

**From:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Sent:** 2/22/2019 9:47:29 PM  
**To:** Gottesman, Larry [Gottesman.Larry@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]  
**CC:** Albright, Scott [Albright.Scott@epa.gov]  
**Subject:** RE: Freedom of Information Act Appeal EPA-HQ-2019-002029 (Request EPA-HQ-2019-000381)  
**Attachments:** FOIAPolicyand ProceduresMemo.pdf; OGC Guidance\_FOIA Improvement Act of 2016.pdf; EPA FOIA Policy 09-30-2014.pdf; EPA FOIA Procedures 09-30-2014.pdf

Hi Kevin and Scott,

As of last week, we have a new document that identifies the EPA Public Liaison. See attached Memo from Matt updating the Agency's policy and procedure to define the Public Liaison as the director of the NFO.

Tim

Timothy R. Epp  
Acting Director, National FOIA Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel. 202-564-2830

---

**From:** Gottesman, Larry  
**Sent:** Friday, February 22, 2019 4:16 PM  
**To:** Miller, Kevin <Miller.Kevin@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Albright, Scott <Albright.Scott@epa.gov>  
**Subject:** RE: Freedom of Information Act Appeal EPA-HQ-2019-002029 (Request EPA-HQ-2019-000381)

Kevin-

When we responded to the original request, after consultation with Tim Epp, we did not create a list of the EPA's FOIA Public Liaison or provide him a listing in our response. We don't have a written list, I could tell you who they were from memory, but do not have a paper record.

Hope this helps.

Larry F. Gottesman  
Agency FOIA Officer  
Office of General Counsel  
U.S. Environmental Protection Agency

202-566-2162 (Direct line)  
202-689-4588 (Mobile)  
202-566-1667 (Main line)

---

**From:** Miller, Kevin  
**Sent:** Friday, February 22, 2019 3:56 PM

**To:** Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Albright, Scott <[Albright.Scott@epa.gov](mailto:Albright.Scott@epa.gov)>

**Subject:** Freedom of Information Act Appeal EPA-HQ-2019-002029 (Request EPA-HQ-2019-000381)

Larry and Tim,

I wanted to verify this appeal. I understand Larry talked with Tim, so I am copying you both. The requestor asked: "Provide the current EPA FOIA Public Liaisons. Also provide the history of all EPA FOIA Public Liaisons from January 1, 2015 to current with dates they held the position as EPA FOIA Public Liaison." I read the second part of the request for documents indicating who held the FOIA Liaison role from January 2015 and for what time frame.

Larry's response provided two links – the website on FOIA Liaisons and a 2006 memo. However, the links do not provide the actual name of the public liaison. The 2006 memo designates the old FOIA branch chief as the FOIA liaison, which is a position that no longer exists since the NFO moved to OGC. I want to make sure that we can defend the search for responsive records. Are there any documents, such as trainings, updates to FOIA officers etc. that indicate who the current FOIA Liaison is and who were the FOIA Liaisons were from 2015 to the date of the request?

Kevin



Message

---

**From:** Schumacher, Wendy [schumacher.wendy@epa.gov]  
**Sent:** 9/17/2018 5:23:23 PM  
**To:** Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** FW: FOIA Policy - revision  
**Attachments:** OEI Draft Directive Initiation Form v9.docx; POLICY\_FOIA\_Draft\_05032017.docx

We'll need a new template!

*Wendy Schumacher, Ph.D., PMP*  
**National FOIA Office**  
**Government Information Specialist**  
**(202) 566-2513**  
**email: [schumacher.wendy@epa.gov](mailto:schumacher.wendy@epa.gov)**

---

**From:** Schumacher, Wendy  
**Sent:** Wednesday, May 03, 2017 4:06 PM  
**To:** Byrd, Jonda <[byrd.jonda@epa.gov](mailto:byrd.jonda@epa.gov)>  
**Cc:** Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** FOIA Policy - revision

Jonda,

Pam gave me a new template this morning. She wants a track changes version which is attached.

Please let me know if you approve or have any changes.

Thanks, Wendy

---

**From:** Schumacher, Wendy  
**Sent:** Wednesday, February 22, 2017 4:13 PM  
**To:** Byrd, Jonda <[byrd.jonda@epa.gov](mailto:byrd.jonda@epa.gov)>  
**Cc:** Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** FOIA Policy - revision

Jonda,

Here is the draft revision to the FOIA Policy and the OEI Directive Initiation Form for your review.

Please let me know if you have any changes.

Thanks, Wendy

*Wendy Schumacher, Ph.D., PMP*  
**Government Information Specialist**  
**Office of Environmental Information**  
**FOIA, Libraries & Accessibility Division**  
**(202) 566-2513**  
**email: [schumacher.wendy@epa.gov](mailto:schumacher.wendy@epa.gov)**

Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 3/20/2019 6:42:58 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**CC:** Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date  
**Attachments:** Draft ACTION MEMO FOIA Regulations Update (03.20.2019).docx; OP ACTION MEMO Template.docx

Hi Tim,

Attached is the guidance document and the draft memo.

Two notes:

- Re the guidance document
  - o I removed the initial background section provided by OP because it is largely an explanation of the overall process, some of which (OMB and FAR review) do not apply.
- Re the draft memo
  - o I retained and highlighted the guidance for the "Management Concerns" section. This would be for Matt to provide any concerns to the Administrator. At this point there shouldn't be any remaining, especially since this is a final rule and not a NPRM or something high profile.
  - o The Management Concerns can be struck if Matt has not input. If he does, we should resolve them and then strike the section.

Thanks,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 1:54 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Looks Good, Chris. Minor comments in the attached.

I agree with your recommendation to take Phase 1 out of the title.

I'd recommend breaking this into two documents: 1) the guidance elements; and 2) the draft memo (so that Matt can see what it will look like when it goes to the Admin.) And, add the Draft watermark.

Tim

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office

EPA Office of General Counsel

---

**From:** Creech, Christopher

**Sent:** Wednesday, March 20, 2019 1:35 PM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

What a timely question!

Attached are the final squibs and a draft of the action memo.

For the Action Memo, two points:

- 1) What is the title of this action? We have been going with FOIA Regulations Update, Phase I
  - a. I think we should shave off Phase I
- 2) OP has provided commentary on their template, in blue, which I kept in for your convenience

Thanks,

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

---

**From:** Epp, Timothy

**Sent:** Wednesday, March 20, 2019 1:29 PM

**To:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>; Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

# Ex. 5 AC/AWP/DP

Query: where are you on the draft memo?

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

**From:** Schramm, Daniel

**Sent:** Wednesday, March 20, 2019 1:26 PM

**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

# Ex. 5 AC/AWP/DP

**From:** Creech, Christopher

**Sent:** Wednesday, March 20, 2019 12:21 PM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

# Ex. 5 AC/AWP/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 12:16 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris,

**Ex. 5 AC/AWP/DP**

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Wednesday, March 20, 2019 12:08 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Tim,

Squib edits attached.

**Ex. 5 AC/AWP/DP**

# Ex. 5 AC/AWP/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 8:34 AM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris – some more edits on the appeals options paper. This is now ready to go to Joe.

# Ex. 5 AC/AWP/DP

Tim

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 4:03 PM  
**To:** Schramm, Daniel <Schramm.Daniel@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

# Ex. 5 AC/AWP/DP

C

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Schramm, Daniel  
**Sent:** Tuesday, March 19, 2019 2:04 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

I don't have many thoughts on the policy choice. I would

Ex. 5 AC/AWP/DP

## Ex. 5 AC/AWP/DP

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 1:52 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

Have you previously considered this issue? I'm comfortable with the counseling unless you think there's any red flags.

# Ex. 5 AC/AWP/DP

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Tuesday, March 19, 2019 1:05 PM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Thanks Chris, see my comments and edits in the attached. I liked your edits.

Regarding my new questions in the comments

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP



**Timothy R. Epp**

Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 11:47 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

I accepted your edits and suggested two additional, which reflect feedback from Andy and GLO.

**Ex. 5 AC/AWP/DP**

Thanks and let me know if you have any questions.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Monday, March 18, 2019 8:50 AM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris, let's discuss the attached as an alternate approach. Some factual information is needed to complete this.  
Tim

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Friday, March 15, 2019 11:55 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Putting this to the top of your inbox. For the Phase I Regs, Matt wanted us to follow up with squibs for the as-applied cut-off date issue and with new language for the appeals authority language. Note, I updated the proposed administrative appeals attachment.

Thanks,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

**From:** Creech, Christopher

**Sent:** Tuesday, March 12, 2019 10:12 AM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Denise Walker ([Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)) <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry  
<[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Below is some proposed language for the Appeals Determinations Authority.

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Monday, March 11, 2019 2:00 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Attached are the squibs for Matt re the cut-off date issue. Please let me know if the format and content is acceptable and whether you would like me to send them up to Joe/Elise and Matt.

Thank you,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel | U.S. Environmental Protection Agency  
(202) 564-4286 | WJCN Room 7353E | [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)



Message

---

**From:** Sharke, Janet [Sharke.Janet@epa.gov]  
**Sent:** 9/16/2019 6:42:00 PM  
**To:** Bickford, James (CIV) [James.Bickford@usdoj.gov]  
**CC:** Kelly, Lynn [Kelly.Lynn@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** COA v DOI, EPA production list.docx  
**Attachments:** EPA FOIA foreseeable harm.PNG; Implementing-the-FOIA-Improvement-Act-of-2016-Jan-2017-Advanced.pdf; USDOJ-training-FOIA-Improvement-Act-of-2016.pdf; FOIA-Toolkit-National-FOIA-Training-2017 (2).pdf; A2 2016 FOIA Amendments and FOIA Regulations Update FINAL (090517).pdf; B1 Exemption 5 FINAL (090517).pdf; FY17 FOIA Training\_Alternative Text\_August 2017.pdf; FY18 FOIA Training\_Alternative Text\_September 2017.pdf; 2017.07.12-EPA-Letter-to-Sen.-Bennet-1.pdf; COA v DOI, EPA production list.docx

James,

Per our discussion on Friday, I attach mostly pdf versions of the 9 responsive records EPA has found to date. We will send the redacted documents to you also, once done. I will not be doing the redacting because, among other reasons, I am not capable of doing so electronically (licensing restricted).

I have listed documents below as well as on the word document attached.

## 2 and 3 are DOJ powerpoint trainings converted to pdfs.

## 5 and 6 are EPA OGC powerpoint trainings also converted that, as we discussed, need redacting prior to release.

**COA v. DOI et al**

EPA records - 6/30/16 to March 2019 (NFO to confirm date of 1<sup>st</sup> search)

1. Screen shot of <http://intranet.epa.gov/foia/foreseeable-harm-standard.html>

Screen shot attached – I cannot save as pdf.

An EPA re-posting text of a DOJ summary. Unknown date.

2. DOJ training, “Implementing-the-FOIA-Improvement-Act-of-2016-Jan-2017”

Is DOJ ok with EPA release?

3. DOJ training, “FOIA-Improvement-Act-of-2016”

Is DOJ ok with EPA release?

4. EPA “FOIA-Toolkit-National-FOIA-Training-2017”

EPA OGC NFO needs to confirm prior release.

5. EPA OGC Training “A2 2016 FOIA Amendments and FOIA Regulations Update FINAL”

NEEDS REDACTING by OGC.

6. EPA OGC Training “B1 Exemption 5 FINAL”

NEEDS REDACTING by OGC.

7. EPA FY17 annual employee online training alternative text

8. EPA FY18 annual employee online training alternative text

9. EPA letter to Senator Michael F. Bennet dated 7/12/17

Thanks.

Janet



# THE FOIA IMPROVEMENT ACT OF 2016

Matt Schwarz- OGC-GLO  
[schwarz.matthew@epa.gov](mailto:schwarz.matthew@epa.gov)

September 12, 2017  
EPA National FOIA Training  
Conference

# OVERVIEW

## Changes that result in greater disclosures

- The “Rule of 3”
- Codification of the Foreseeable Harm Standard
- 25-year Sunset on the Deliberative Process Privilege

## Changes affecting processing of FOIA requests

- New Elements for Response Letters
- Extending Time Limits
- Charging Fees

## Other changes



# GREATER DISCLOSURES - THE “RULE OF THREE”

The “Rule of Three” states that any document requested three times must be publicly-available in electronic format.

- This is different from proactive disclosures (discussed next).

## Recommended Action:

- ✓ Programs should make sure that all FOIA responses are properly uploaded to FOIAonline. Most records uploaded to FOIAonline are available to the public.

# GREATER DISCLOSURES - PROACTIVE DISCLOSURES

The FOIA Improvement Act of 2016 amends Section 3102 of the Federal Records Act, 44 U.S.C. § 3102, to include a requirement that agencies establish “procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.”

# GREATER DISCLOSURES - FORESEEABLE HARM STANDARD CODIFIED

## **Foreseeable Harm Standard:**

Agencies “shall withhold information” under the FOIA “only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”

Amendments codify the foreseeable harm standard set forth in Attorney General Eric Holder’s “Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 51879 (Oct. 8, 2009).”

# GREATER DISCLOSURES - DUTY TO SEGREGATE NONEXEMPT INFORMATION

Agencies must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible” and “take reasonable steps necessary to segregate and release nonexempt information.”

- Although the FOIA already included language requiring agencies to segregate nonexempt information, the FOIA Improvement Act of 2016 adds additional language that appears in the 2009 Attorney General Memorandum regarding agencies’ obligation to segregate nonexempt information.

# GREATER DISCLOSURES - NEW SUNSET PROVISION

## 25-year sunset on the Deliberative Process Privilege (DPP)

- DPP can no longer be applied to records created 25 years or more prior to the date of the FOIA request.
- The Sunset Provision does not affect withholdings under the Attorney-Client or Attorney Work Product privileges.

# GREATER DISCLOSURES - RECOMMENDED ACTIONS

- ✓ Continue to apply the foreseeable harm standard, as we have previously done, consistent with the Holder memorandum.
- ✓ Do not withhold a document in full if it can be released in part.
- ✓ Do not withhold a document or portions of a document under the deliberative process privilege if it was created 25 years or more prior to the date of the FOIA request.

# PROCESSING CHANGES - NEW ELEMENTS FOR RESPONSE LETTERS

## **Final Response Letters for adverse determinations:**

- Right to seek assistance from FOIA Public Liaison;
- 90 days to appeal; and
- Right to seek dispute resolution services from FOIA Public Liaison or Office of Government Information Services (OGIS), part of the National Archives and Records Administration (NARA).

# PROCESSING CHANGES - EXTENSIONS OF TIME

If you get the additional 10 working days but then determine that you cannot respond within that extended period, you must notify the requester that it has the right to seek dispute resolution services from OGIS.

- This notification must be issued in a “timely manner.” While “timely manner” is not defined in the Act, OGC recommends that offices send the letter during the 10 working day extended period.



# PROCESSING CHANGES - RECOMMENDED ACTIONS

- ✓ Use the new appeal language available on the intranet (next slide).
- ✓ Continue to provide appeal language for all Final Response Letters, including full grants.
- ✓ If you anticipate that it will take you more than 30 calendar days to respond to a FOIA request (i.e., 20 days plus 10 days for unusual circumstances), make sure to notify requesters:
  - (1) that you need time beyond the 10-day extension period; and
  - (2) that they have a right to seek dispute resolution services from the OGIS.

## FOR COPYING AND PASTING INTO LETTERS:

### NEW APPEAL LANGUAGE FOR ALL FINAL FOIA RESPONSES, EXCEPT EXEMPTION 4:

This letter concludes our response to your request. You may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

### APPEAL LANGUAGE IF THERE IS AN INITIAL WITHHOLDING BASED ON EXEMPTION 4:

This letter concludes our response to your request. As noted above, the information withheld under Exemption 4 will be reviewed by the appropriate legal office, which will issue a final confidentiality determination. Therefore, you do not need to appeal the withholding of information under Exemption 4. Once the legal office issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholdings, you may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service or overnight delivery you must address your correspondence to 1301 Constitution Avenue, N. W., Room 6416J, Washington, DC 20004. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. Appeals received after 5:00 pm EST will be considered received the next business day. The Agency will not consider appeals received after the 90-calendar-day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA tracking number shown above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail to the Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; email, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.



# PROCESSING CHANGES - NEW LIMITATION ON SEARCH FEES

Agencies can no longer charge search fees if the response is beyond the 20-day deadline (or 30-day in the case of “unusual circumstances”), even with an agreement from the requester.

As a reminder, “unusual circumstances” apply when there is a need:

- to search for and collect records from field offices, or other establishments;
- to search for, collect, and examine a voluminous amount of records; or
- for consultations with another agency or with more than two components within the same agency.

# PROCESSING CHANGES - NEW LIMITATION ON SEARCH FEES *EXCEPTION*

Agencies may still charge search fees (or duplication fees for “news media” or “educational” requesters) if:

- “unusual circumstances” apply, and
- “more than 5,000 pages are necessary to respond to the request,” if:
  - (1) timely written notice has been made to the requester, and
  - (2) “the agency has discussed with the requester how the requester could effectively limit the scope of the request.” The agency must make at least three good-faith attempts to discuss limiting the scope of the request with the requester and the communication must be by written mail, electronic mail, or telephone.
- Note: “5,000 pages” refers to the number of pages in the total universe of documents required for review (i.e., “collected” documents), *not* the number of pages that will be ultimately released to the requester.

# PROCESSING CHANGES - NEW LIMITATION ON SEARCH FEES - RECOMMENDED ACTIONS

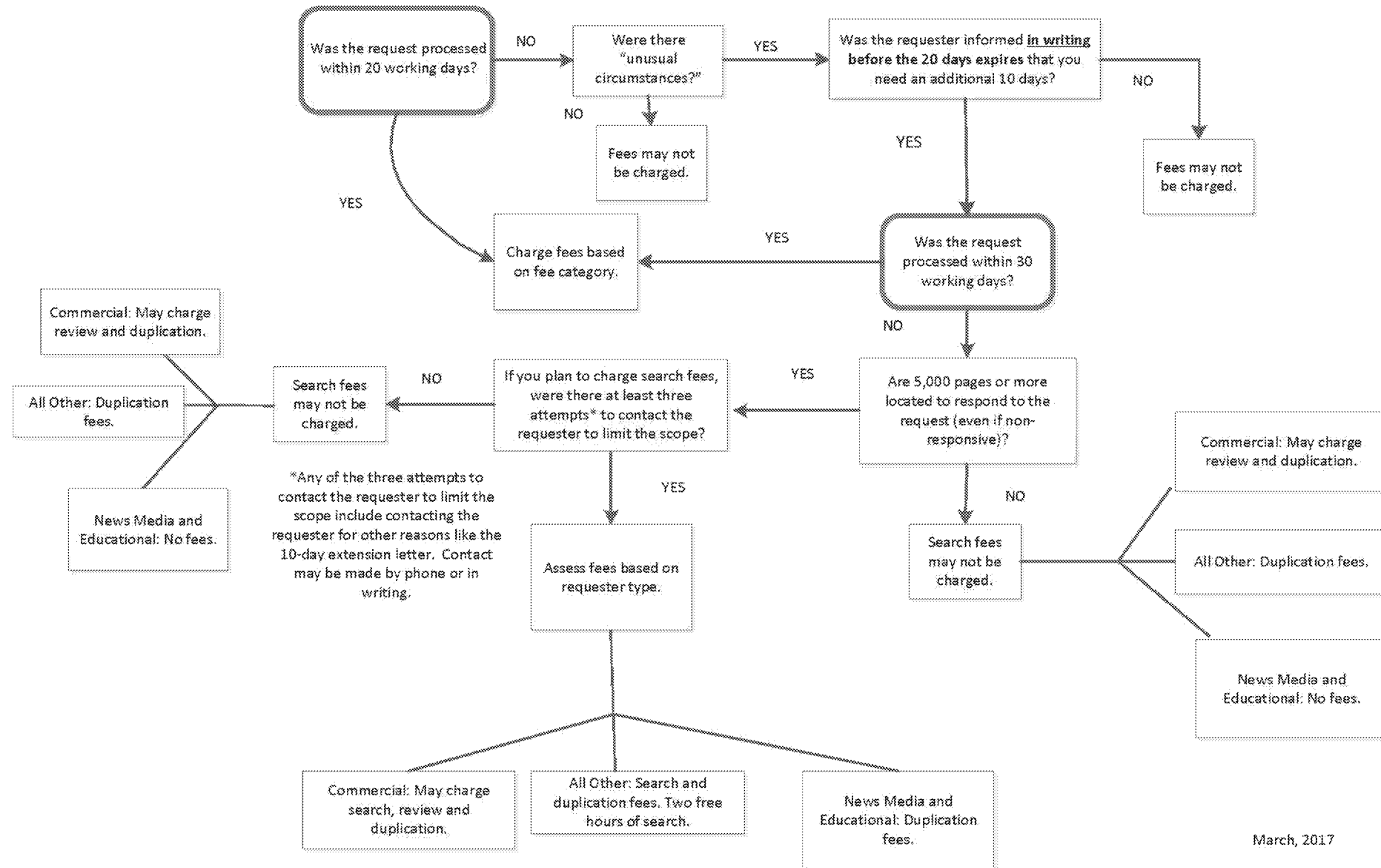
- ✓ If you expect the final FOIA response to occur beyond the 10-day extension and more than 5,000 pages are necessary to respond, notify the requester before the 10 days expires and discuss how it can limit the scope of the request.
- ✓ If you know that unusual circumstances will apply when you receive the request, invoke the additional 10 days in your acknowledgement letter and include language inviting the requester to discuss how to limit the scope of the request.
  - This will satisfy the “timely notice” requirement and will qualify as your first attempt to discuss with the requester how to limit the scope of the request.

# PROCESSING CHANGES - NEW LIMITATION ON SEARCH FEES - RECOMMENDED ACTIONS (CONT.)

- ✓ If a fee assurance letter is sent later, include another opportunity for the requester to discuss how to limit the scope.
  - This will qualify as your second attempt to discuss with the requester how to limit the scope of the request if the first attempt went unanswered. If the requester has not responded to either attempt, you will only need to make one additional attempt to contact the requester before satisfying the requirement that the agency make three good-faith attempts.
  - If in response to any attempt to discuss how to limit the scope of the request, the requester refuses to limit the scope, it is not necessary to make additional attempts.

# FOIA Fees Decision Tree

Based on the FOIA Amendments of 2016



March, 2017





# OTHER CHANGES

**Chief FOIA Officers** are now required to:

- ✧ “offer training to agency staff regarding their [FOIA] responsibilities,”
- ✧ “serve as the primary liaison with the Office of Government Information Services and the Office of Information Policy” which are part of NARA and DOJ, respectively.
- ✧ “review, not less frequently than annually, all aspects” of their agency’s FOIA administration.

**New Chief FOIA Officer Council** will serve as a forum for collaboration across agencies and with the requester community to explore innovative ways to improve FOIA administration.

- ✧ It shall “meet regularly and such meetings shall be open to the public” and at least annually the Council must have an open meeting that permits interested members of the public to appear and present statements.

**Annual FOIA Report** must include two new elements:

- ✧ The number of times “the agency denied a request for records under subsection (c)” of the FOIA, and
- ✧ The “number of records that were made available for public inspection in an electronic format under subsection (a)(2).”

The **Director of OMB**, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that:

- ✧ Allows the public to submit a request to any agency from a single website, and
- ✧ May include additional tools that OMB finds will improve FOIA.

# RESOURCES

## The FOIA Improvement Act of 2016

\* <https://www.congress.gov/114/bills/s337/BILLS-114s337enr.xml>

## DOJ Summary of the FOIA Improvement Act of 2016

\* <https://www.justice.gov/oip/oip-summary-foia-improvement-act-2016>

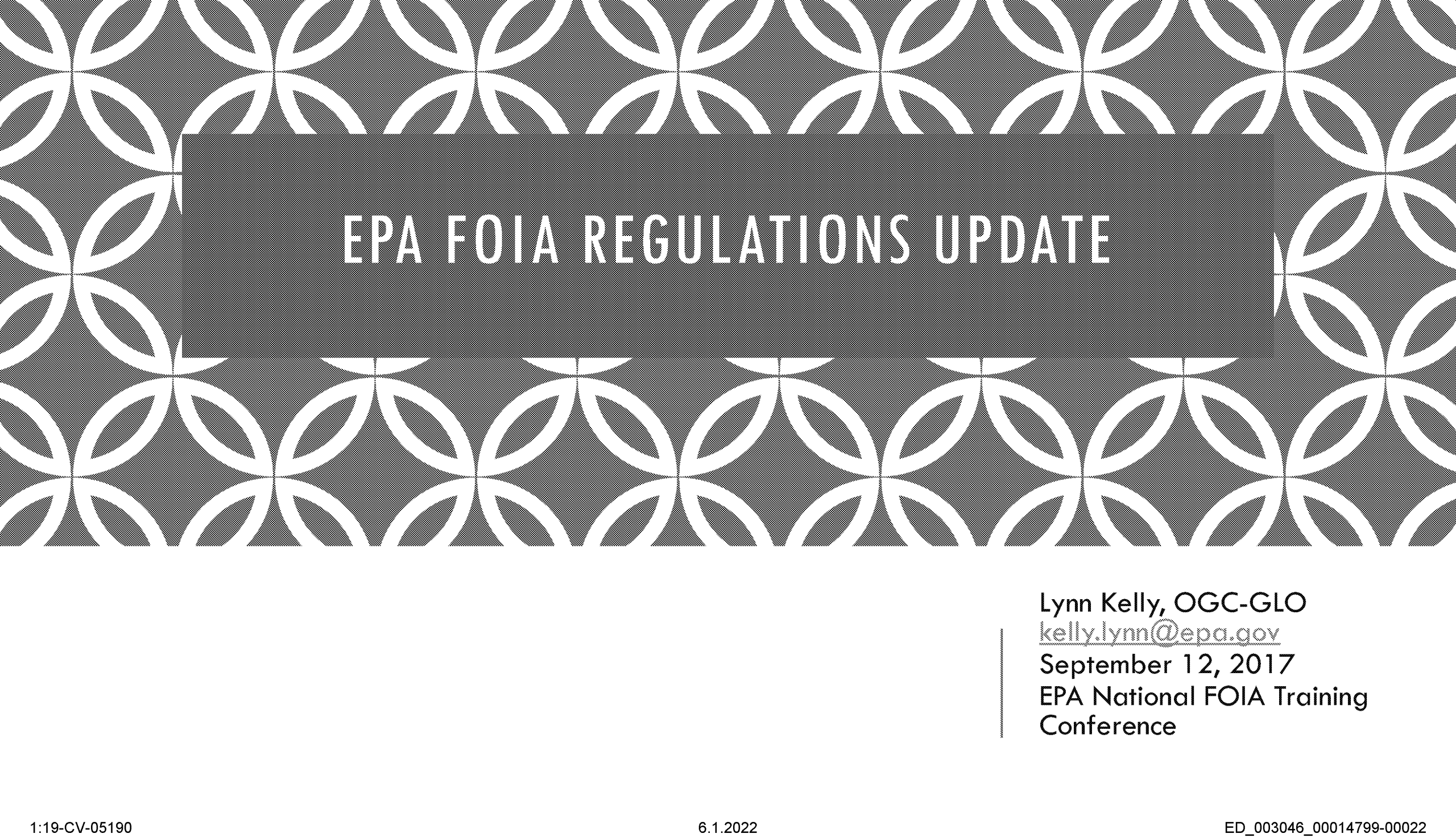
## EPA FOIA Fees Decision Tree

\* <http://intranet.epa.gov/foia/docs/Fee-decision-tree.pdf>

## Model FOIA Appeal Language

\* <http://intranet.epa.gov/foia/docs/FOIA-Appeal-language-March2017.docx>

Matt Schwarz, OGC-GLO, Information Law practice Group:  
[schwarz.matthew@epa.gov](mailto:schwarz.matthew@epa.gov) or 202-564-5654



# EPA FOIA REGULATIONS UPDATE

Lynn Kelly, OGC-GLO

[kelly.lynn@epa.gov](mailto:kelly.lynn@epa.gov)

September 12, 2017

EPA National FOIA Training  
Conference

# NEED FOR REVISION OF EPA'S FOIA REGULATIONS

Most recent update to the regulations occurred in 2002

2007 Open Government Act Amendments

2011 EPA FOIA Workgroup Report Recommendation

2016 FOIA Improvement Act Requirement

Impact of technology changes to FOIA processing

# OVERVIEW OF POTENTIAL CHANGES

## Organization

Revisions related to the 2007 and 2016 Amendments to FOIA

Improvements and Clarifications to EPA's FOIA Process

- Submission of Proper Requests
- Responding to Requests
- Administrative Appeals

FOIA Fees and Fee Waivers

Other Changes

# POTENTIAL ORGANIZATION

- Follow structure of DOJ FOIA Regulations
- Use 10 subsections instead of 9
- Remove Exemption Categories subsection
- Add a Proactive Disclosures subsection

CURRENT	PROPOSED
§ 2.100 General provisions.	
§ 2.101 Where requests for records are to be filed.	§ 2.101 General provisions.
§ 2.102 Procedures for making requests.	§ 2.102 Proactive disclosures of Agency records.
§ 2.103 Responsibility for responding to requests.	§ 2.103 Requirements for making requests.
§ 2.104 Responses to requests and appeals.	§ 2.104 Responsibility for responding to requests.
§ 2.105 Exemption categories.	§ 2.105 Timing of responses to requests.
§ 2.106 Preservation of records.	§ 2.106 Responses to requests.
§ 2.107 Fees.	§ 2.107 Administrative appeals.
§ 2.108 Other rights and services.	§ 2.108 Preservation of records.
	§ 2.109 Fees.
	§ 2.110 Other rights and services.

# POTENTIAL UPDATES RELATING TO FOIA AMENDMENTS

Update definition of news media (2007)

Minimize “misdirected requests” delays (2007)

- ※ Fewer offices designated in the regulations to receive FOIA requests and streamlined channels of submission to EPA

Updated tolling provisions (2007)

Establishment of the FOIA Public Liaison (2007)

Search fees limitation (2016)

Final response requirements (2016)

Time for appeal (90 days) (2016)



# POTENTIAL PROCESS IMPROVEMENTS — REASONABLE DESCRIPTION

Potential definition incorporates standard established by legislative history and case law:

- *“a description that enables EPA personnel familiar with the subject matter to identify and locate the records sought using a process that is not unreasonably burdensome to or disruptive of EPA operations.”*

Would establish that two common types of requests that would generally fail to meet this standard:

- “all records relating to” or “all records that in any way refer to” a topic, with no additional description; and
- “all documents” or “all emails” belonging to an individual with no description of a subject matter.

# OTHER POTENTIAL PROCESS IMPROVEMENTS

Incorporate three other types of requests commonly determined to be improper:

- Requests seeking creation of new records,
- Requests for records that don't exist (even if a document may be expected to come into existence at a later time), or
- Requests that ask questions rather than request documents.

Revise Privacy Act request submission instructions

Clarify impact of interim responses on appeal rights

Contact information for referrals

# OTHER POTENTIAL PROCESS IMPROVEMENTS

Removal of notice requirement for search cut-off date

FOIA language to describe requirements for aggregation of requests

Simplify the authority to approve release and withholding decisions

Update the language to reflect centralization of fee waiver and expedited processing decisions in HQ

Specify that the need to comment on rulemaking does not qualify a request for expedited treatment

Streamline intake process and decision-making authority for appeals



# POTENTIAL FEE AND FEE WAIVER CHANGES

Higher minimum billable threshold:

- From \$14 to \$250

Certification statement requirement for fee waivers

- No changes to six-factor standard

Clarify impact to timing of fee waiver requests for purposes of tolling

- Automatic toll unless requester submits contingent assurance of payment at the same time

Explicitly permit billing search costs if line by line review is needed to determine responsiveness

# POTENTIAL FEE AND FEE WAIVER CHANGES (CONT.)

Changes to direct costs:

CURRENT	Clerical	Professional	Managerial
Search & Review	\$4.00 / 15 min	\$7.00 / 15 min	\$10.25 / 15 min
Duplication	\$0.15 / page		

PROPOSED	GS-12 and under	GS-13 and over
Search & Review	\$15.00 / 15 min	\$20.00 / 15 min
Duplication	\$0.10 / page	

# OTHER POTENTIAL CHANGES

Memorialize the National FOIA Procedures practice of posting released records online through FOIAonline

Remove list of exemptions as duplicative of the statute

# NEXT STEPS & ESTIMATED TIMELINE

The draft regulations are in the final stages of management review.

Public Notice and Comment Period is 30 days.

EPA will need to respond to comments before a final rule can be issued.

For Questions on Status Contact: Larry Gottesman, Agency FOIA Officer at [gottesman.larry@epa.gov](mailto:gottesman.larry@epa.gov)



# CONTACT INFORMATION

**Lynn Kelly**, *Team Lead, FOIA Administrative Appeals*

*Information Law Practice Group*

*General Law Office*

*Office of General Counsel*

[kelly.lynn@epa.gov](mailto:kelly.lynn@epa.gov)

(202) 564-3266

**Matt Schwarz**

*Information Law Practice Group*

*General Law Office*

*Office of General Counsel*

[Schwarz.matt@epa.gov](mailto:Schwarz.matt@epa.gov)

(202) 564-5654

## **Additional Contact:**

Kevin Miller, Assistant General Counsel for Information Law, General Law Office, Office of General Counsel, (202) 564-2691, [miller.kevin@epa.gov](mailto:miller.kevin@epa.gov)

# FOIA Exemption 5

September 13, 2017

National FOIA Training Conference

Mike Boydston, R8 ORC  
Jennifer Hammitt, OGC GLO

**Remember:**

## **FOIA mandates disclosure**

Under the Freedom of Information Act (FOIA), the Government **must release** all records responsive to a FOIA request, unless the information is exempt from disclosure under one of the nine statutory exemptions.

# Exemption 5 overview

- ▶ Protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency”
- ▶ Incorporates civil discovery privileges into FOIA
  - Deliberative Process Privilege
  - Attorney-Client Privilege
  - Attorney Work Product Privilege

# Exemption 5 Threshold Requirement

- “Inter-agency or intra-agency”: if this isn’t satisfied, you cannot assert Exemption 5.
- As interpreted, this is not strictly limited to records internal to executive branch agencies — depending on the facts, it **may** in limited circumstances also include agency communications with:
  - Outside experts and other consultants
  - States, tribes
  - Congress
  - Contractors
  - Federal Commissions
  - The White House

# Exemption 5 Threshold Requirement: The Consultant Corollary

- ▶ *Klamath* case from Supreme Court.
- ▶ Agencies can protect advice from consultants and other outside experts functioning as an agency employee would be expected to do.
  - But the consultant must not be representing its own interest or some other outside interest in advising the agency.
  - Especially, the consultant cannot be seeking its own benefit at the expense of others (*Klamath*: “the distinction is even sharper” then).
- ▶ A consultant can be a volunteer.
- ▶ A formal consulting relationship is not necessary.
- ▶ Doesn’t flow both ways — covers advice to EPA, not advice from EPA.

# Other threshold requirement issues

- ▶ Common Interest Doctrine
  - Joint Prosecution Agreements
- ▶ Co-regulator?
- ▶ Settlements?
- ▶ “Peer Review” and “Stakeholder Review”

# Exemption 5 – Deliberative Process Privilege (DPP)

Once the inter/intra threshold requirement has been met, material may be covered by DPP, if and only if, it is:

- (1) **Predecisional:** The information must relate to deliberations before the adoption of an agency policy/decision.  
  
**and**
- (2) **Deliberative:** It "reflects the give-and-take of the consultative process."

**Note:** it's not enough that material is "internal."



# DPP element 1: “Predecisional”

- DPP is not lost after the decision is made.
  
- But: created after the decision is made? Not predecisional
  - Final policy statements, opinions with force of law: these *are* the decisions, so are not predecisional
  - Documents that implement an established policy
  - Documents that explain or discuss actions already taken

# DPP element 2: “Give and Take”

- What does it mean to “reflect give-and-take discussions”?
  - The decision does not have to be gigantic.
  - A decision does not even have to be reached.
  - But there has to be a decisionmaking process.
- Who drafted the information?
- What authority and level — did information flow from subordinate to superiors?
- Substantive vs. trivial decisionmaking
- Examples

# DPP and Foreseeable Harm Analysis

- Now required by law (2016 FOIA amendments).
- Foreseeable harm analysis for DPP:
  - Harm quality of agency decisions?
  - Chilling effect on candid opinions / advice?
  - Public confusion from premature disclosure?
  - But: embarrassment  $\neq$  harm

# **Deliberative Process Privilege: Applying the Privilege**

Steps in considering DPP:

1. Inter/intra threshold
2. Exemption elements (predecisional & deliberative)
3. Foreseeable harm analysis
4. Redaction to release reasonably segregable information

# **Deliberative Process Rolling Sunset** (part of 2016 amendments):

...the deliberative process privilege  
shall not apply to records created  
25 years or more before the date on  
which the records were requested

Therefore, as of today, you cannot claim DPP for  
documents dating from before September 1992.

# Attorney-Client Privilege

- ▶ You still have to meet the Exemption 5 threshold.
- ▶ Concerns “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data v. Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977).

# Attorney-Client Privilege — issues and questions

- ▶ Confidential communications between agency attorneys can be covered, as can communications between attorneys and staff, that discuss legal issues or ask for legal advice.
  - Must be kept confidential/need to know
- ▶ A cc to an Agency attorney isn't itself enough (unless it's clear that purpose is to get/give attorney advice)!

# Attorney Work Product

- ▶ The work product privilege protects material (1) prepared by, or at the direction of, an attorney (2) in reasonable anticipation of litigation.
- ▶ Extends to civil, criminal, and administrative litigation, as well as amicus briefs. *Env'tl. Prot. Servs. v. EPA*, 364 F. Supp.2d 575, 586 (N.D.W.Va. 2005) (EPA administrative enforcement proceeding).



# Attorney Work Product — issues and questions

- ▶ “In anticipation of litigation” / interplay with litigation holds
- ▶ What kind of material does it cover? Does it have to be substantive?

# Redaction

**Redacting responsive records:** FOIA requires EPA to segregate non-exempt (releasable) information from exempt (withholdable) information, if the releasable information can be reasonably segregated.

Different redaction approaches for:

- Deliberative Process Privilege
- Attorney-Client Privilege
- Attorney Work Product

Concerns with subject-matter and general waiver.

# Other possible Exemption 5 privileges?

- Settlement – No! (Evidentiary rule ≠ Exemption 5 privilege)
- Doctor/patient, clergy, other privileges?
- What about judicial orders / protective orders?
- Look to other exemptions when Exemption 5 can't apply – 7A (enforcement), 6 (privacy), 4 (business info).

# A few practice tips

- ▶ Easily filter some non-privileged material in reviews by searching for communications with outside parties.
- ▶ Spotting drafts in Relativity
- ▶ Front-end recommendations for composition and labeling
- ▶ Effect of email header/footer labels

# Questions?

# Resources / reference

- ▶ DOJ Guide: <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.
- ▶ DOJ FOIA resource page: <http://www.justice.gov/oip/foia-resources>.
- ▶ OGC Program Attorneys often know FOIA and can help on Exemption 5.
- ▶ ORC Information Law Attorneys (ask your ORC).
- ▶ OGC information law group: <http://intranet.epa.gov/ogc/information.htm>.

Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 3/1/2019 8:48:42 PM  
**To:** OGC NFO [OGC-NFO@epa.gov]  
**Subject:** FYI Draft Phase I FOIA Regs  
**Attachments:** Phase I FOIA Regs Clean 03.01.2019.docx; Phase I FOIA Regs Redline 03.01.2019.docx; Phase I FOIA Regs Changes Explanation 03.01.2019.docx

Hello All,

In case you were interested, attached is the Phase I FOIA Regs packet that was sent to Matt for reading before our meeting next week. I hope everyone has a good weekend!

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E  
[Creech.Christopher@EPA.gov](mailto:Creech.Christopher@EPA.gov)



Message

---

**From:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Sent:** 3/20/2019 5:53:33 PM  
**To:** Creech, Christopher [Creech.Christopher@epa.gov]  
**CC:** Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date  
**Attachments:** Draft ACTION MEMO Phase I FOIA Regulations (03.20.2019) TRE comments.docx

Looks Good, Chris. Minor comments in the attached.

I agree with your recommendation to take Phase 1 out of the title.

I'd recommend breaking this into two documents: 1) the guidance elements; and 2) the draft memo (so that Matt can see what it will look like when it goes to the Admin.) And, add the Draft watermark.

Tim

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Wednesday, March 20, 2019 1:35 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

What a timely question!

Attached are the final squibs and a draft of the action memo.

For the Action Memo, two points:

- 1) What is the title of this action? We have been going with FOIA Regulations Update, Phase I
  - a. I think we should shave off Phase I
- 2) OP has provided commentary on their template, in blue, which I kept in for your convenience

Thanks,



Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 1:29 PM  
**To:** Schramm, Daniel <Schramm.Daniel@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

**Ex. 5 AC/AWP/DP**

Query: where are you on the draft memo?

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Schramm, Daniel  
**Sent:** Wednesday, March 20, 2019 1:26 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

**Ex. 5 AC/AWP/DP**

# Ex. 5 AC/AWP/DP

**From:** Creech, Christopher

**Sent:** Wednesday, March 20, 2019 12:21 PM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

## Ex. 5 AC/AWP/DP

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

**From:** Epp, Timothy

**Sent:** Wednesday, March 20, 2019 12:16 PM

**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris,

## Ex. 5 AC/AWP/DP

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Wednesday, March 20, 2019 12:08 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Tim,

Squib edits attached.

# Ex. 5 AC/AWP/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 8:34 AM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris – some more edits on the appeals options paper. This is now ready to go to Joe.

# Ex. 5 AC/AWP/DP

# Ex. 5 AC/AWP/DP

Tim

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office

EPA Office of General Counsel

---

**From:** Creech, Christopher

**Sent:** Tuesday, March 19, 2019 4:03 PM

**To:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

# Ex. 5 AC/AWP/DP

C

Christopher T. Creech

Attorney-Adviser

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-4286

Room 7353 E

**From:** Schramm, Daniel  
**Sent:** Tuesday, March 19, 2019 2:04 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

I don't have many thoughts on the policy choice. I would

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 1:52 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

**Ex. 5 AC/AWP/DP**

Best,

Christopher T. Creech

Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Tuesday, March 19, 2019 1:05 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Thanks Chris, see my comments and edits in the attached. I liked your edits.

## Ex. 5 AC/AWP/DP

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 11:47 AM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

I accepted your edits and suggested two additional, which reflect feedback from Andy and GLO.

# Ex. 5 AC/AWP/DP

# Ex. 5 AC/AWP/DP

Thanks and let me know if you have any questions.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Monday, March 18, 2019 8:50 AM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris, let's discuss the attached as an alternate approach. Some factual information is needed to complete this.  
Tim

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Friday, March 15, 2019 11:55 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Putting this to the top of your inbox. For the Phase I Regs, Matt wanted us to follow up with squibs for the as-applied cut-off date issue and with new language for the appeals authority language. Note, I updated the proposed administrative appeals attachment.

Thanks,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 12, 2019 10:12 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Denise Walker ([Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)) <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Below is some proposed language for the Appeals Determinations Authority.

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**



# Ex. 5 AC/AWP/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Monday, March 11, 2019 2:00 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Attached are the squibs for Matt re the cut-off date issue. Please let me know if the format and content is acceptable and whether you would like me to send them up to Joe/Elise and Matt.

Thank you,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel | U.S. Environmental Protection Agency  
(202) 564-4286 | WJCN Room 7353E | [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)



Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 3/20/2019 5:35:10 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**CC:** Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date  
**Attachments:** Phase I FOIA Regs Cut-off Date Squibs (03.20.2019).docx; Draft ACTION MEMO Phase I FOIA Regulations (03.20.2019).docx

What a timely question!

**Ex. 5 AC/AWP/DP**

Thanks,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 1:29 PM  
**To:** Schramm, Daniel <Schramm.Daniel@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

**Ex. 5 AC/AWP/DP**

Query: where are you on the draft memo?

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Schramm, Daniel  
**Sent:** Wednesday, March 20, 2019 1:26 PM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

**Ex. 5 AC/AWP/DP**

---

**From:** Creech, Christopher  
**Sent:** Wednesday, March 20, 2019 12:21 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

**Ex. 5 AC/AWP/DP**

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 12:16 PM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

Cc: Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

Subject: RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris,

## Ex. 5 AC/AWP/DP

**Timothy R. Epp**

Acting Director | [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher

**Sent:** Wednesday, March 20, 2019 12:08 PM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>

**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Tim,

## Ex. 5 AC/AWP/DP

Christopher T. Creech

Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Wednesday, March 20, 2019 8:34 AM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris – some more edits on the appeals options paper. This is now ready to go to Joe.

**Ex. 5 AC/AWP/DP**

Tim

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 4:03 PM  
**To:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

# Ex. 5 AC/AWP/DP

C

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

**From:** Schramm, Daniel  
**Sent:** Tuesday, March 19, 2019 2:04 PM  
**To:** Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

I don't have many thoughts on the policy choice. I would

**Ex. 5 AC/AWP/DP**

## Ex. 5 AC/AWP/DP

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 1:52 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>  
**Cc:** Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Dan,

# Ex. 5 AC/AWP/DP

# Ex. 5 AC/AWP/DP

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Tuesday, March 19, 2019 1:05 PM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Thanks Chris, see my comments and edits in the attached. I liked your edits.

## Ex. 5 AC/AWP/DP

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 19, 2019 11:47 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

# Ex. 5 AC/AWP/DP

Thanks and let me know if you have any questions.

Best,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Epp, Timothy  
**Sent:** Monday, March 18, 2019 8:50 AM  
**To:** Creech, Christopher <[Creech.Christopher@epa.gov](mailto:Creech.Christopher@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Chris, let's discuss the attached as an alternate approach. Some factual information is needed to complete this.  
Tim

**Timothy R. Epp**  
Acting Director | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel



1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Creech, Christopher  
**Sent:** Friday, March 15, 2019 11:55 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Putting this to the top of your inbox. For the Phase I Regs, Matt wanted us to follow up with squibs for the as-applied cut-off date issue and with new language for the appeals authority language. Note, I updated the proposed administrative appeals attachment.

Thanks,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Tuesday, March 12, 2019 10:12 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Denise Walker ([Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)) <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>; Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** RE: Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

# Ex. 5 AC/AWP/DP

# Ex. 5 AC/AWP/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Monday, March 11, 2019 2:00 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Schramm, Daniel <[Schramm.Daniel@epa.gov](mailto:Schramm.Daniel@epa.gov)>  
**Subject:** Review and Communication Requested, Squibs for Matt re Cut-Off Date

Hi Tim,

Attached are the squibs for Matt re the cut-off date issue. Please let me know if the format and content is acceptable and whether you would like me to send them up to Joe/Elise and Matt.

Thank you,

Christopher T. Creech

Attorney--Adviser

Office of General Counsel | U.S. Environmental Protection Agency

(202) 564-4286 | WJCN Room 7353E | [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)



Message

---

**From:** Bigioni, Neil [bigioni.neil@epa.gov]  
**Sent:** 4/16/2018 9:42:49 PM  
**To:** Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

Thanks. One could argue it is a CIO policy and doesn't fit the call. I think let's be over-inclusive.

Neil

---

**From:** Gottesman, Larry  
**Sent:** Monday, April 16, 2018 5:38 PM  
**To:** Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

Will fill out the form in the morning, but wanted to get the PDF to you so you can see them. If you had a second thought.

Larry F. Gottesman  
Agency FOIA Officer  
Office of General Counsel  
U.S. Environmental Protection Agency

202-566-2162 (Direct line)  
202-689-4588 (Mobile)  
202-566-1667 (Main line)

---

**From:** Bigioni, Neil  
**Sent:** Monday, April 16, 2018 5:00 PM  
**To:** Gottesman, Larry <Gottesman.Larry@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

I think it sounds worth including. Please obtain a pdf of the document and fill out the tracking chart that was attached to the original email.

---

**From:** Gottesman, Larry  
**Sent:** Monday, April 16, 2018 4:57 PM  
**To:** Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

I don't think this is relevant to the project, but we did issue a FOIA Policy and National FOIA Procedures about 3 years ago.

Larry F. Gottesman  
Agency FOIA Officer  
Office of General Counsel

U.S. Environmental Protection Agency

202-566-2162 (Direct line)

202-689-4588 (Mobile)

202-566-1667 (Main line)

---

**From:** Bigioni, Neil

**Sent:** Monday, April 16, 2018 4:50 PM

**To:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>

**Subject:** FW: GC Memos Collection Project (Due 4/27)

From the description of relevant documents below (under Explanation of Project), I would not think either side of the National FOIA Office would have much if anything responsive, but can you please either confirm that to me or let me know to the contrary. You may feel free to circulate as necessary to form your response.

There will be a new delegation designating Matt as the Chief FOIA Officer for the agency, but Elise has taken that over and it is not final.

Thanks,

Neil

---

**From:** Mills, Derek

**Sent:** Monday, April 16, 2018 2:38 PM

**To:** Albores, Richard <[Albores.Richard@epa.gov](mailto:Albores.Richard@epa.gov)>; Bigioni, Neil <[bigioni.neil@epa.gov](mailto:bigioni.neil@epa.gov)>; Blake, Wendy <[Blake.Wendy@epa.gov](mailto:Blake.Wendy@epa.gov)>; Briskin, Jeanne <[Briskin.Jeanne@epa.gov](mailto:Briskin.Jeanne@epa.gov)>; Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>; Grant, Brian <[Grant.Brian@epa.gov](mailto:Grant.Brian@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Lattimore, Kraig <[lattimore.kraig@epa.gov](mailto:lattimore.kraig@epa.gov)>; Lee, Terry <[lee.terry@epa.gov](mailto:lee.terry@epa.gov)>; Lewis, Jen <[Lewis.Jen@epa.gov](mailto:Lewis.Jen@epa.gov)>; Michaud, John <[Michaud.John@epa.gov](mailto:Michaud.John@epa.gov)>; Minoli, Kevin <[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Redden, Kenneth <[Redden.Kenneth@epa.gov](mailto:Redden.Kenneth@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>; Siciliano, CarolAnn <[Siciliano.CarolAnn@epa.gov](mailto:Siciliano.CarolAnn@epa.gov)>; Srinivasan, Gautam <[Srinivasan.Gautam@epa.gov](mailto:Srinivasan.Gautam@epa.gov)>; Youngblood, Charlotte <[Youngblood.Charlotte@epa.gov](mailto:Youngblood.Charlotte@epa.gov)>; Zenick, Elliott <[Zenick.Elliott@epa.gov](mailto:Zenick.Elliott@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Moora, David <[moora.david@epa.gov](mailto:moora.david@epa.gov)>

**Cc:** OGC Immediate Office MGMT <[OGC\\_Immediate\\_Office\\_MGMT@epa.gov](mailto:OGC_Immediate_Office_MGMT@epa.gov)>; Monson, Mahri

<[Monson.Mahri@epa.gov](mailto:Monson.Mahri@epa.gov)>

**Subject:** GC Memos Collection Project (Due 4/27)

Hello All,

This email kicks off the GC Memos Collection Project. This is the same project that I sent an email about on April 5. At that time I asked for feedback on the draft tracking sheet. Thank you very much for your review and comments. We are now moving to Phase 2: ADDs work with their respective offices, and designated point of contact, to populate the tracking sheet with relevant guidance in each office. While we are ultimately interested in completing this project for the date range of 1993 – present, Matt would like to have the project completed for 2008 – 2017 by May 1. As such, **please submit the filled out tracking sheet for years 2008 – 2017 to Marcella & Derek by COB on Friday April 27**. This will give us a day to compile all responses for Matt. Direct all questions to Marcella & Derek.

## **Explanation of Project with Additional Details**

One of Matt's priorities is to establish an inventory in the form of a spreadsheet of all legal guidance related to (1) environmental statutes and regulations and (2) internal OGC operations (delegations, policies, internal guidance for OGC attorneys, hiring, personnel matters, etc.). This inventory is to include all formal memos, guidance documents, directives, opinions, or other similar official documents issued from either the General Counsel, or the Office of General Counsel. This is not an exact science. This project will require some discretion because there is not a standard naming convention, or a standard format, for these documents in this date range. We are looking for "formal" or "official" documents similar to what we already have on the OGC intranet page. Some nonexclusive signs to look for are letterhead, date stamps, and pen signatures. The document definitely does not need to have these things to be included. For the environmental statutes, we are typically looking for documents that have been shared with the public / published somewhere. Memos on internal OGC management are not typically shared outside of the Agency. We do expect to collect some memos signed by Associates in OGC, or issued by Associates without any actual signature. I don't think that we will collect any documents issued by OGC staff attorneys. We do not want emails. In addition, this inventory will include recommendations on what, if anything, to do with each document.

### **Summary Guidelines**

- The task is to locate, collect, document, categorize, and assess all legal guidance, per the parameters above.
- This should be comprehensive. **When in doubt, include the document**, but remember the parameters above.
- While we realize that some of this information already exists in repositories such as the OGC intranet, the E-Library within Lotus Notes, and in hard copy in the law library on the 1st floor, we are asking that this data be populated on the spreadsheet.
- Please collect and/or create digital copies to be posted on the OGC intranet page.
  - o We will rely on each law office to provide a PDF version of each document listed in their tracking chart.
- Please note whether the document is still "live" and recommend to the GC if revision or recession is advised. Should OGC revise, revoke, or maintain the document, and why?
  - o "Live" in this context means that the document is helpful to OGC practice, controlling, or binding in any way, to any extent, on EPA or OGC. Put another way, to be "live" means that the document is still good law. In some instances, GC memos specifically revoke other GC memos. In other instances, a GC memo may have been overridden by a court decision, the statute or regs may have changed, or circumstances make it irrelevant or obsolete now. There are many reasons that an old document may be "dead" or "bad law." Further, it may be possible for only a portion of the document to be "live." Please note this information in the relevant column of the spreadsheet.

Please direct all questions to Marcella & Derek. Thanks!

### **Derek Mills**

Special Assistant, Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-3341

Message

---

**From:** Gottesman, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3DBF872F954FBEB950E98C56BDC431-LGOTTESM]  
**Sent:** 4/17/2018 1:22:17 PM  
**To:** Schumacher, Wendy [schumacher.wendy@epa.gov]  
**Subject:** Fwd: GC Memos Collection Project (Due 4/27)

Larry F. Gottesman

Sent from my iPhone

Begin forwarded message:

**From:** "Bigioni, Neil" <[bigioni.neil@epa.gov](mailto:bigioni.neil@epa.gov)>  
**Date:** April 16, 2018 at 4:59:44 PM EDT  
**To:** "Gottesman, Larry" <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>, "Walker, Denise" <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

I think it sounds worth including. Please obtain a pdf of the document and fill out the tracking chart that was attached to the original email.

---

**From:** Gottesman, Larry  
**Sent:** Monday, April 16, 2018 4:57 PM  
**To:** Bigioni, Neil <[bigioni.neil@epa.gov](mailto:bigioni.neil@epa.gov)>; Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>  
**Subject:** RE: GC Memos Collection Project (Due 4/27)

I don't think this is relevant to the project, but we did issue a FOIA Policy and National FOIA Procedures about 3 years ago.

Larry F. Gottesman  
Agency FOIA Officer  
Office of General Counsel  
U.S. Environmental Protection Agency

202-566-2162 (Direct line)  
202-689-4588 (Mobile)  
202-566-1667 (Main line)

---

**From:** Bigioni, Neil  
**Sent:** Monday, April 16, 2018 4:50 PM  
**To:** Walker, Denise <[Walker.Denise@epa.gov](mailto:Walker.Denise@epa.gov)>; Gottesman, Larry <[Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov)>  
**Subject:** FW: GC Memos Collection Project (Due 4/27)

From the description of relevant documents below (under Explanation of Project), I would not think either side of the National FOIA Office would have much if anything responsive, but can you please either confirm that to me or let me know to the contrary. You may feel free to circulate as necessary to form your response.

There will be a new delegation designating Matt as the Chief FOIA Officer for the agency, but Elise has taken that over and it is not final.

Thanks,

Neil

---

**From:** Mills, Derek

**Sent:** Monday, April 16, 2018 2:38 PM

**To:** Albores, Richard <Albores.Richard@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Briskin, Jeanne <Briskin.Jeanne@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Lattimore, Kraig <lattimore.kraig@epa.gov>; Lee, Terry <lee.terry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Moora, David <moora.david@epa.gov>

**Cc:** OGC Immediate Office MGMT <OGC.Immediate.Office.MGMT@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>

**Subject:** GC Memos Collection Project (Due 4/27)

Hello All,

This email kicks off the GC Memos Collection Project. This is the same project that I sent an email about on April 5. At that time I asked for feedback on the draft tracking sheet. Thank you very much for your review and comments. We are now moving to Phase 2: ADDs work with their respective offices, and designated point of contact, to populate the tracking sheet with relevant guidance in each office. While we are ultimately interested in completing this project for the date range of 1993 – present, Matt would like to have the project completed for 2008 – 2017 by May 1. As such, **please submit the filled out tracking sheet for years 2008 – 2017 to Marcella & Derek by COB on Friday April 27.** This will give us a day to compile all responses for Matt. Direct all questions to Marcella & Derek.

#### **Explanation of Project with Additional Details**

One of Matt's priorities is to establish an inventory in the form of a spreadsheet of all legal guidance related to (1) environmental statutes and regulations and (2) internal OGC operations (delegations, policies, internal guidance for OGC attorneys, hiring, personnel matters, etc.). This inventory is to include all formal memos, guidance documents, directives, opinions, or other similar official documents issued from either the General Counsel, or the Office of General Counsel. This is not an exact science. This project will require some discretion because there is not a standard naming convention, or a standard format, for these documents in this date range. We are looking for "formal" or "official" documents similar to what we already have on the OGC intranet page. Some nonexclusive signs to look for are letterhead, date stamps, and pen signatures. The document definitely does not need to have these things to be included. For the environmental statutes, we are typically looking for documents that



have been shared with the public / published somewhere. Memos on internal OGC management are not typically shared outside of the Agency. We do expect to collect some memos signed by Associates in OGC, or issued by Associates without any actual signature. I don't think that we will collect any documents issued by OGC staff attorneys. We do not want emails. In addition, this inventory will include recommendations on what, if anything, to do with each document.

#### Summary Guidelines

- The task is to locate, collect, document, categorize, and assess all legal guidance, per the parameters above.
- This should be comprehensive. **When in doubt, include the document**, but remember the parameters above.
- While we realize that some of this information already exists in repositories such as the OGC intranet, the E-Library within Lotus Notes, and in hard copy in the law library on the 1st floor, we are asking that this data be populated on the spreadsheet.
- Please collect and/or create digital copies to be posted on the OGC intranet page.
  - o We will rely on each law office to provide a PDF version of each document listed in their tracking chart.
- Please note whether the document is still "live" and recommend to the GC if revision or recession is advised. Should OGC revise, revoke, or maintain the document, and why?
  - o "Live" in this context means that the document is helpful to OGC practice, controlling, or binding in any way, to any extent, on EPA or OGC. Put another way, to be "live" means that the document is still good law. In some instances, GC memos specifically revoke other GC memos. In other instances, a GC memo may have been overridden by a court decision, the statute or regs may have changed, or circumstances make it irrelevant or obsolete now. There are many reasons that an old document may be "dead" or "bad law." Further, it may be possible for only a portion of the document to be "live." Please note this information in the relevant column of the spreadsheet.

Please direct all questions to Marcella & Derek. Thanks!

**Derek Mills**

Special Assistant, Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-3341

Message

---

**From:** Hill, Kevin W. [hill.kevinw@epa.gov]  
**Sent:** 6/20/2019 5:00:07 PM  
**To:** Schumacher, Wendy [schumacher.wendy@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** Unusual Circumstances  
**Attachments:** FOIA Toolkit Appendix.docx; FOIA Toolkit.pdf; B - EPA FOIA Regulations (2016).pdf; Email Templates\_Enhancing Intake\_draft 6.20.19.docx

INTERNAL DELIBERATIVE  
DO NOT RELEASE UNDER FOIA

Workgroup,

Please let me know your thoughts about the updated email templates by COB Monday. I checked the language with the FOIA, EPA Regs, the toolkit, and the toolkit appendix. I would like if someone could also check it with DOJ guidance before then.

Key features:

**Ex. 5 AC/DP**

Thanks.

Regards,  
Kevin

**Kevin W. Hill**

Attorney-Adviser | [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309C  
Phone 202-564-1652 | [hill.kevinw@epa.gov](mailto:hill.kevinw@epa.gov)



National FOIA Office  
EPA Office of General Counsel

Message

---

**From:** Schumacher, Wendy [schumacher.wendy@epa.gov]  
**Sent:** 6/26/2019 12:16:59 PM  
**To:** Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** Regulations published  
**Attachments:** Regs Phase I 6 26 19.pdf

Larry,

The Regulations Phase published in today's Federal Register.

Wendy

**Wendy Schumacher, Ph.D., PMP**

Government Information Specialist | National FOIA Office  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310 A)  
Washington, D.C. 20460 | WJCN 5315 E  
Phone (202) 566-2513 | [schumacher.wendy@epa.gov](mailto:schumacher.wendy@epa.gov)



National FOIA Office  
EPA Office of General Counsel